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## VIRGINIA ELECTRONIC CHILD CARE (VA-ECC) VENDOR AGREEMENT

Vendor ID: \_\_\_\_\_

Effective Date: \_\_\_\_\_

This **Agreement** is made by and between ACS State & Local Solutions, Inc. a New York Corporation, having an office at 8260 Willow Oaks Corporate Drive, Fairfax, VA 22031 (hereinafter "ACS") and \_\_\_\_\_

\_\_\_\_\_, a ☐ \_\_\_\_\_ corporation,  
☐ individual(s), ☐ partnership, ☐ Limited Liability Company (LLC) ☐ other \_\_\_\_\_;  
☐ organized and existing under the Laws of the Commonwealth of \_\_\_\_\_,  
and having a ☐ business, ☐ residence at \_\_\_\_\_  
(hereinafter "**Vendor**").

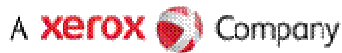
ACS is under contract with the Commonwealth of Virginia (hereinafter "**State**") to provide an automated e-Child Care system that provides timekeeping and recording of attendance of State authorized Child Care attendees as well as provide the Commonwealth's payments for the subsidized attendees to Child Care vendors. As part of that contract with the Commonwealth, ACS is also required to furnish equipment for the use by child care vendors and maintain that equipment.

### Article 1: ACS RESPONSIBILITIES

- 1.1 ACS will furnish Vendor with Point of Service (POS) terminal equipment (hereinafter "**Equipment**") and related services: installation, training, repairs, and help desk support.
- 1.2 Equipment. Equipment shall be a VeriFone model VX 510 or 570 Point-of-Service terminal (POS). ACS reserves the right to change the Equipment's brand, model or features at any time without prior notification to Vendor.
- 1.3 Equipment Ownership. Equipment shall at all times remain the property of ACS.
- 1.4 Equipment Usage. Equipment shall be used by Vendor solely in connection with the Virginia Child Care Subsidy Program (hereinafter "**Program**").
- 1.5 Equipment Allocation. One (1) unit of Equipment shall be furnished for every 50 Commonwealth authorized Child Care attendees assigned to the Vendor under the Commonwealth Child Care Program (hereinafter "**Active Participants**"). ACS reserves the right to remove excess Equipment on demand during Vendor's normal business hours. Excess Equipment is defined as a ratio of Equipment to Active Participants of less than 1:50 when more than 1 (one) unit of Equipment is furnished (examples: 1:49 or 1:30). Guidelines for Equipment allocation are established under a separate contract between ACS and the Commonwealth.
- 1.6 Installation. ACS shall provide for Equipment installation at a time mutually agreed to between ACS (or its designated installer) and the Vendor.
- 1.7 Training. At the time of installation, the Vendor or authorized person will be trained and provided one (1) *Quick Reference Guide* and one (1) *Virginia Child Care Vendor Operations Manual*. These reference materials will also be made available on the Child Care Vendor Web Portal.



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- 1.8 Help Desk. ACS shall provide a toll-free telephone number for Vendor use 24 hours per day/7 days per week. The Help Desk will be staffed by customer support representatives. The Help Desk will also be staffed on all major holidays.
- 1.9 Equipment Repair. ACS shall be solely responsible for repair of malfunctioning Equipment. For Equipment repair, Vendor shall promptly notify ACS using the telephone number(s) separately furnished to Vendor by ACS. Repair calls will be accepted during normal help desk hours listed above. Telephone calls from pay phones will not be accepted. At ACS discretion, Equipment may either be repaired or replaced. If the equipment issue cannot be resolved by phone with the Customer Service Representative nor National Equipment Maintenance Center (NEMC), and replacement equipment is required, the equipment is replaced within 48 hours of notification of the problem and is received by the vendor the following business day.
- 1.10 Supplies. ACS will provide the initial supply of paper. After the initial two (2) rolls per device are supplied, Vendors will be responsible for purchasing paper for the equipment.

## **Article 2: VENDOR RESPONSIBILITIES**

- 2.1 Equipment Use and Care. The Vendor agrees that it shall follow the instructions of any manuals accompanying the Equipment, as amended from time to time, in the care, use and installation requirements of the Equipment as specified by the manufacturer or ACS.
- 2.2 Equipment Security. Vendor agrees that it shall provide reasonable security measures to protect the Equipment from damage, theft or unauthorized use.
- 2.3 Equipment Environmental. Vendor agrees that it shall provide suitable electric current (standard 120 volt outlets) to operate the Equipment, a suitable place for Equipment installation, a suitable environment for the Equipment and telephone/internet service for use by the Equipment (shared or dedicated at the Vendor's discretion). Vendor agrees to be solely responsible for and bear all one-time and recurring expenses and fees, of all electrical and telephone/internet services necessary for the operation of the Equipment.
- 2.4 Vendor and Bank Data. Vendor agrees that at all times it shall provide accurate and current data for Exhibit A (Virginia Vendor Settlement Authorization Form). Vendor acknowledges that failure to immediately notify ACS in writing of changes to Exhibit A data may result in a delay in equipment installation and/or payment for child care services. Vendor acknowledges and agrees that banking information can be used to credit, debit, and/or make adjustments to credits or debits, required to fulfill the terms of this agreement.
- 2.5 Equipment Control and Location. Vendor agrees that it will at all times keep the Equipment in its sole possession and control. The Equipment shall not be moved from the Vendor address(es) reflected on record with the Commonwealth without prior authorization from Commonwealth.
- 2.6 Equipment Liens. Vendor agrees that it shall keep the Equipment free and clear of all liens and encumbrances.
- 2.7. Equipment Access. Vendor agrees that ACS or its designee shall have free and clear access to the Equipment at all reasonable times for the purpose of maintenance, repair, inspection or removal.
- 2.8 Equipment Repair. Vendor agrees that it shall not make or attempt to make any repairs to the Equipment.



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**Article 3: TERM AND TERMINATION**

3.1 Term. The term of the Agreement shall commence on the Effective Date and continue while Contract No. 94649-AC765 between ACS and the Virginia Department of Social Services is in effect, and/or the Vendor's Commonwealth-determined term of agreement for participation, as well as the existence of assigned Active Participants.

3.2 [Reserved.]

3.3 Termination. Either party may terminate this Agreement without cause upon giving thirty (30) days prior written notice to the other party, citing this Section 3.3.

This Agreement shall terminate immediately upon the instance of one or more of the following: Vendor is no longer authorized under the Commonwealth Child Care Subsidy Program, Vendor ceases its business operations in the Commonwealth for any reason, or Vendor is not caring for children authorized under Commonwealth Program subsidies for a predetermined amount of time.

3.4 Effect of Termination – Equipment. Within five (5) business days of Agreement termination, Vendor shall return all Equipment to ACS at ACS expense and in the manner agreed to by ACS, or make the Equipment available for ACS pickup at a mutually agreed time from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. Upon termination of the Agreement pursuant to the provisions herein, Vendor will immediately return the Equipment to ACS or purchase the Equipment from ACS at a price to be mutually agreed upon between ACS and Vendor. Failure of the Vendor to return equipment within ten (10) business days of the effective termination date will result in an ACH debit for the value of the Equipment in an amount no greater than three hundred dollars and no cents (\$330.00) to the Vendor's financial institution account.

Should such a debit occur as a result of non-returned equipment on the part of Vendor, Vendor will have 30 days from the day of the debit to return the equipment and receive a full refund. Credits will not be issued beyond 30 days and Vendor will own the equipment if they were successfully debited in accordance with the terms of this Agreement.

Exception: Section 3.4 an ACH debit will not apply to local government operated child care facilities. Local government operated child care facilities shall receive a notice of charge in lieu of an ACH debit

This clause shall survive contract termination.

**Article 4: CARE OF EQUIPMENT**

4.1 Vendor agrees to follow the instructions of any Manuals accompanying the Equipment, as amended from time-to-time, in the use and care of the Equipment and agrees to advise ACS or its authorized representatives of any conditions that may require servicing. Vendor will take all reasonable security measures to protect the Equipment from damage and/or unauthorized use. Vendor will not make or attempt to make any repairs to the Equipment. Vendor agrees to bear the expense of repairing damage to the Equipment which occurs while the Equipment is in Vendor's care, unless such damage is caused by Equipment malfunction which did not result from Vendor's improper use of the Equipment.

**Article 5: LIMITATION OF LIABILITY**

5.1 ACS and the Commonwealth will not be responsible or liable for any cost, expense or damage arising out of the use of the Equipment by Vendor including, but not limited to, lost profits or damages to persons or



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property. Vendor will bear all risks including the entire risk of loss, theft, damage or destruction of the Equipment and all liability for the use, possession, operation, storage and condition of the Equipment; provided, however, that Vendor will not be liable for personal injury and/or damages to property resulting from the negligence or willful acts of ACS, its employees, subcontractors or agents.

**Article 6: INDEMNIFICATION**

- 6.1 Vendor will indemnify and hold ACS, its parent corporations, affiliates, employees, subcontractors and agents harmless from all losses, costs, expenses and damages, including attorneys' fees, incurred because of or incident to the Equipment or the use, possession, operation, storage and condition thereof; provided, however, that Vendor's obligation to indemnify and hold harmless will not apply in cases in which ACS will be found liable for personal injury and/or damage to property resulting from the negligence or willful acts of ACS, its employees, contractors or agents.

Exception: Section 6.1 does not apply to local government operated child care facilities

**Article 7: WARRANTIES**

- 7.1 ACS WARRANTS THAT SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE PERFORMED IN ACCORDANCE WITH INDUSTRY STANDARDS BY QUALIFIED PERSONNEL IN A QUALITY MANNER AND WILL CONFORM TO THE SPECIFICATIONS AS DESCRIBED HEREIN.
- 7.2 THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN BY ACS WITH RESPECT TO THE SERVICES AND EQUIPMENT PROVIDED PURSUANT TO THIS AGREEMENT. ACS MAKES NO OTHER WARRANTIES EXPRESSED OR IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

**Article 8: GOVERNING LAW**

- 8.1 This Agreement will be governed by and construed in accordance with the Laws of the Commonwealth of Virginia and any action commenced hereunder shall be brought in Commonwealth of Virginia. Further, Vendor consents to the jurisdiction of the courts located in Commonwealth of Virginia.

**Article 9: ASSIGNMENT**

- 9.1 Neither this Agreement, nor any right or obligation thereunder, shall be assigned to third parties by the Vendor without the prior written consent of ACS.

**Article 10: AMENDMENTS OR ADDENDA**

- 10.1 The amendments, addenda, exhibits or attachments listed below, are incorporated herein by reference:

Exhibit A: Virginia ECC Vendor Reimbursement and Settlement Authorization Form  
Exhibit B: Vendor Location Confirmation Form

**Article 11: INDEPENDENT CONTRACTOR**



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- 11.1 The parties shall, at all times, be independent contractors, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or employer and employee between the parties.

**Article 12: ENTIRE AGREEMENT AND MODIFICATIONS**

- 12.1 This Agreement supersedes any and all prior representations, conditions, warranties, understandings, proposals, or previous agreements between the parties hereto, either oral or written relating to the matters of this Agreement hereunder and constitutes the sole, full and complete agreement between the parties.
- 12.2 Further, this Agreement shall not be modified, changed, amended, or waived except by means of a written instrument signed by an authorized representative of each party.

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**IN WITNESS WHEREOF**, the parties hereto have, through duly authorized officials, executed this Agreement.

**ACS STATE & LOCAL SOLUTIONS, INC.**

**CHILD CARE VENDOR**

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Michael Langenohl  
(Name, type or print)

\_\_\_\_\_  
(Name, type or print)

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(Title)

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